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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,349	03/26/2004	Pieter Theodorus Johannes Aquarius	VER-179XX	8227

207. 7590 01/22/2007
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP
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BOSTON, MA 02109

EXAMINER

LOPEZ, MICHELLE

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/810,349

Applicant(s)

AQUARIUS, PIETER THEODORUS
JOHANNES

Examiner

Michelle Lopez

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-23 is/are pending in the application.
- 4a) Of the above claim(s) 16-18 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-15, 19-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the amendment filed on 11/1/06.

Claim 9 has been canceled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8, 10-15, 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The functional recitations in claim 1 of "a control designed for forming a layer", and "designed such that the loading unit places a formed layer"; in claim 3 "the control designed to rotate a bag through an angle of 45 degrees", "to rotate it through an additional 45 degrees", and "designed to already provide the first rotating system" are indefinite in that the scope of the claimed structure that applicant considers to be the invention is unclear. The claims are written in a narrative format and therefore it is difficult to determine what is the scope of the claimed invention. For example, is Applicant attempting to include within the scope of claim 1 the mechanism that moves the holder down into the container? The claim should be rewritten positively reciting the structure of the invention or in means plus function format..

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3721

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Fallas 4,864,801.

Fallas discloses the invention substantially as claimed including an apparatus for loading containers with bags comprising a feed conveyor assembly, a loading unit, a control designed for forming layers of bags in the loading unit, wherein the layer having dimensions substantially corresponding to a bottom dimension of a container to be filled, the loading unit is provided with a holder which is movable up and down with respect to said container, and the holder being sized to be substantially fittingly receivable in the container, and wherein the loading unit places the layer of bags by moving the holder down into said container (claim 1); a stop 26, a first conveying direction, a transfer device 40, a further conveying path with a second conveying direction perpendicular to the first conveying direction (claim 5); wherein the loading unit is provided with a holder 66 movable up and down as shown in col. 5; 38-43.

With respect to claim 14, Fallas also teaches the concept of pressure-controlled air cylinder and a drive (not shown numerically) to control the vertical position of the holder as shown in Fig. 2J.

With respect to claim 15, Fallas discloses a conveying system for containers as shown in Fig. 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3721

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas

4,864,801 in view of Focke 5,430,994.

Fallas discloses the invention substantially as claimed including a first rotating system 30 and a second rotating system 22 one behind the other as shown in Figs. 2A-2E, but does not disclose wherein each rotating system comprises two parallel running conveyor belts which are drivable at different speeds. Focke teaches the concept of a feeding conveyor having two rotating system 17,16 arranged one behind the other, wherein said rotating systems comprise two parallel running conveyor belts 18,19 and 35,43 which are drivable at different speeds for the purpose of feeding bags to a packer for the packing of packs into containers in groups or layers. It would have been obvious to have provide Fallas' rotating system with two parallel running conveyors as taught by Focke in order to pack packs of bags into containers in groups or layers.

With respect to claims 3 and 4, Focke also teaches the concept of rotating a bag through an angle of 45 degrees via the inclination of the first rotating system 17 and rotating the bag through an additional angle of 45 degrees on the second rotating system as shown in Figs. 3-6, and control signals via 46 (claim 3); and the conveyor 17 is arranged so as to be movable up and down (claim 4).

Claims 6-8, 12-13, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas 4,864,801 in view of Fallas 5,123,231.

Fallas' 801 discloses the invention substantially as claimed including a collecting belt at conveyor 24 (claim 6) and folding side plate as shown in Figs. 2A-2E (claim 7), but does not specifically disclose a retracting belt movable as a whole in the second direction. Fallas'231 teaches the concept of a collecting belt and a retracting belt 100, i.e. oscillating conveyor,

Art Unit: 3721

wherein such retracting belt is movable as a whole in a second direction as shown in col. 4; lines 9-53. Therefore, it would have been obvious to one having ordinary skill in the art to provide Fallas'801 feeding conveyor assembly as taught by Fallas'231 to selectively depositing product groups into receptacles.

With respect to claims 8 and 20, Fallas' 801 also discloses wherein a discharge end at the vicinity of 26 is arranged to be movable up and down.

With respect to claims 12-13, Fallas'231 also teaches the concept of sensors as proximity switches 222,224.

Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas 4,864,801.

While Fallas'801 discloses a bottom of the holder formed by a curtain, wherein the curtain has two curtain parts which are movable from a closed position away from each other to an open position, but does not specifically disclose a flexible curtain. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provide a flexible material forming the curtain, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas 4,864,801 in view of Focke 5,430,994 and in view of Fallas 5,123,231 as discussed above.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fallas 4,864,801 in view of Fallas 5,123,231 and in view of Focke 5,430,994 as discussed above.

Response to Arguments

Applicant's arguments have been fully considered but they are not deemed persuasive. Applicant contends that Fallas does not show or suggest (i) a holder sized to be substantially fittingly receivable in a container to be loaded and (ii) a loading unit that places the layers by moving the holder down into said container. Examiner states that Fallas' holder via 66 is sized to be fittingly receivable in a container while said holder 66 pivots between a vertical position into said container. Also, while Fallas' loading unit places the layers by pivoting said loading unit between a vertical position within said container and a horizontal closed position outside said container, it is deemed that said pivoting movement to said vertical position is moved down with respect to said container as broadly claimed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3721

Conclusion

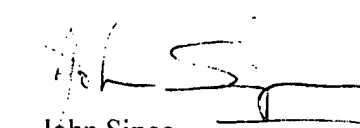
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lorenzen is cited to show the teaching of a loading unit movable up and down.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Lopez whose telephone number is 571-272-4464. The examiner can normally be reached on Monday - Thursday: 8:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michelle Lopez
Examiner


John Sipos
Primary Examiner